

CBE-10-022 – 12 Mile Course.

Staff report for the October 14, 2009, Chesapeake Bay Board public hearing.

This staff report is prepared by the James City County Environmental Division to provide information to the Chesapeake Bay Board to assist them in making a recommendation on this assessment. It may be useful to members of the general public interested in this assessment.

Summary Facts

Applicant	Carey Flannery
Land Owner	Mary and Larry Pope
Location	12 Mile Course, Williamsburg, Virginia
Parcel Identification	5040200012
Staff Contact	Patrick Menichino Phone: 253-6675

Project Summary and Description

Ms. Carey Flannery, of 12 Mile Course, on behalf of Mary and Larry Pope (Owners), has applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for an encroachment into the RPA buffer, for the construction of brick retaining walls totaling 300 LF in length, a 15' x 20' sand set brick paver patio, and the placement of approximately 3000 SF of sand fill/backfill. The lot is located in Kingsmill and was recorded prior to the 1990 adoption of the Ordinance. Following the Ordinance revisions in 2004, a perennial feature and wetlands adjacent to the rear of the property were identified thereby requiring a 100' landward RPA buffer. The lot is 1.424 acres in size and the RPA buffer encompass approximately 70% of the lot or 0.885 acres. The proposed retaining wall, patio and fill will encroach into the landward 50' RPA buffer.

A detailed RPA Mitigation Planting Plan (Plan) has been provided along with the exception request for your review. The plan proposes to mitigate for the RPA impacts by planting (2) native canopy trees, (29) native shrubs, and (37) native ground cover in mulch planting beds to help filter runoff. The amount of plantings proposed exceed the standard mitigation planting requirements of the County for impervious impacts. In addition to the proposed RPA mitigation offered, the applicant's proposed plan will actually reduce the square footage of turf area currently existing onsite. Therefore this proposal will reduce the current encroachment into the RPA.

Staff evaluated the request for the retaining walls and brick paver patio, and considers them to be accessory structures, and therefore according to the Ordinance cannot be granted by administrative exception. The Board has in the past reviewed and granted exceptions for accessory structures within the RPA buffer.

Staff offers the following information as guidance to the Board concerning this application.

1. The applicant has applied for an exception to allow for 300 LF of brick retaining walls, a brick paver patio, and approximately 3000 SF of fill. The retaining walls and patio are considered as accessory structures and therefore must be approved by the Board.
2. The retaining walls and proposed patio will encroach into the landward 50 foot RPA buffer.
3. The applicants have submitted an RPA Mitigation Planting Plan that exceeds the standard mitigation planting requirements of the County for impervious area.
4. The applicant's proposal will reduce the existing turf area on the property and therefore will reduce the overall encroachment into the RPA buffer.
5. Staff evaluated the potential adverse impacts of this proposal and determined them to be minimal.

Background

The lot was recorded after the adoption of the Ordinance, and no RPA existed on the lot at that time. In 2004 the Ordinance requirements related to the determination of perennial flow were changed requiring that perennial water bodies be identified based on a field evaluation. A perennial feature at the rear of the lot was identified requiring that a 100 foot RPA buffer be established on the lot. This 100 foot RPA buffer encompasses about 70% of the lot.

In this case, the exception request is for brick retaining walls, and sand set brick paver patio, within the landward 50 foot buffer. This request does not qualify for an administrative waiver because it is for an accessory structures. Therefore in accordance with section 23-14 of the Ordinance, an exception must be processed by the Chesapeake Bay Board after a public hearing.

Water Quality Impact Assessment (WQIA)

Under Section 23-14 of the amended Ordinance, a water quality impact assessment (WQIA) must be submitted for any proposed land disturbing activity resulting from development or redevelopment within RPAs.

The applicant has submitted the required information as outlined in the *James City County Water Quality Impact Assessment Guidelines*. The applicant has submitted a WQIA for this project and proposes to mitigate for the impacts to the RPA by planting, (1) native canopy tree and (3) native shrubs, in the RPA on the lot to help filter nonpoint source pollution.

The issue before the Board is the addition of the 600 SF of impervious area and approximately 3000 SF of fill within the RPA buffer. The Board is to determine whether or not this is consistent with the spirit and intent of the Ordinance and make a finding based upon the criteria outlined in Section 23-14(c) of the Ordinance.

Recommendations

The Ordinance does not authorize staff to give administrative approval for the placement of accessory structures within RPA buffer.

Staff has evaluated the adverse impacts associated with the proposed accessory structures and has determined them to be minimal.

If the Board votes to approve the exception request, then staff recommends that the following conditions be incorporated into the approval:

1. The applicant must obtain all other permits required from agencies that may have regulatory authority over the proposed activities, including a James City County building permit if required.
2. The size of the trees planted shall be a minimum of 1-1/2 inch caliper (six to eight feet tall) and the shrubs shall be 3 gallon size. All vegetation shall be native species approved by the Environmental Division.
3. Full implementation of the RPA Mitigation Plan submitted with the WQIA and any additional Board mitigation requirements shall be guaranteed through the provisions of the Ordinance contained in Sections 23-10(3) d. and 23-17(c), a form of surety satisfactory to the County Attorney.
4. This exception request approval shall become null and void if construction has not begun by October 14, 2010, or all improvements including the required mitigation plantings are not completed by that expiration date.
5. Written requests for an extension to an exception shall be submitted to the Environmental Division no later than 2 weeks prior to the expiration date.

Staff Report prepared by: _____

Patrick T. Menichino
Compliance Specialist

CONCUR:

Scott J. Thomas,
Secretary to the Board

Attachments: